ABC, Inc.

Sam Antar
Vice President
Legal
Law & Regulation

February 23, 2001

BY HAND

Ms. Magalie Roman-Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: MM Docket No. 00-244
In the Matter of Definition of Radio Markets

Dear Ms. Roman-Salas:

We are transmitting herewith for filling with the Commission an original and four copies of Comments of The Walt Disney Company and its subsidiary, ABC, Inc., in MM Docket No. 00-244.

If there are any questions in connection with the foregoing, please contact the undersigned.

Respectfully submitted,

Sam Antar

77 West 66th Street, New York, NY 10023-6298 (212) 456-6222 Fax (212) 456-6202
E-mail: antars@abc.com

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	MM Docket No. 00-244
Definition of Radio Markets	)	

To: The Commission

COMMENTS OF THE WALT DISNEY COMPANY

The Walt Disney Company ("TWDC"), on behalf of itself and its subsidiary, ABC, Inc., submits these comments in response to the Commission's Notice of Proposed Rule Making ("NPRM") in the above-referenced docket.

Introduction and Summary

In the NPRM, the Commission seeks comment on whether and how to modify the definition of radio markets for the purpose of applying its multiple ownership rules. Specifically, the Commission asks whether it should revise its methodology for counting the number of stations in a market and for determining the number of stations owned by one party in the market. The NPRM discusses four alternative proposals for changing the definition.

TWDC opposes any change in the definition of radio markets for two reasons. First, under each of the Commission's proposals, the effect of a change would be to shrink

markets or limit the number of stations one entity may own. Such a result would be contrary to Congress' objective in enacting the Telecommunications Act of 1996 ("1996 Act") to increase radio ownership opportunities. Second, the proposed changes would adversely affect competition by denying to radio owners seeking to expand the economies of scale that would enable them to better compete against larger groups that have already consolidated as permitted under the 1996 Act.

Argument

1. The Commissions proposals would be contrary to Congress' objective in enacting the 1996 Act.

As the Commission acknowledges in the NPRM, any change to the definition of radio markets must be faithful to Section 202(b)(1) of the 1996 Act and to Congress' objective in enacting the 1996 Act to increase the number of stations in a market in which a party could have a cognizable ownership interest (NPRM, at 2).

In his Concurring Statement to the NPRM, now-Chairman Powell points out that Congress set the 1996 Act's new ownership limits in the context of the existing market definition that is the subject of this proceeding. Chairman Powell warns against any change that would have the effect of shrinking markets or limiting the number of stations one entity may own. Commissioners Ness and Furchtgott-Roth, each in a Separate Statement, echo the view that any definitional change must be consistent with Congress' intent to relax restrictions on radio ownership and permit greater levels of concentration. In our view, all of the Commission's proposed alternatives for changing the definition of radio markets would have the undesired effects the Commission seeks to avoid.

The proposal to switch to Arbitron radio metro market definitions (NPRM, at 10-11) would represent a change that is both radical and fraught with difficulties. The change would be radical because it would result in a drastic reduction in the number of stations counted as in a market. The Commission's Wichita and Ithica examples make this readily apparent (NPRM, at 5). It would be fraught with difficulties for a number of reasons. One reason, cited by the Commission, is that many radio stations are not in an Arbitron metro market (NPRM, at 10). A second difficulty is that Arbitron metro markets do not necessarily reflect marketplace realities. Prior to 1998, Arbitron had no clearly established standards to determine what counties to include in a particular metro area. Although Arbitron has since adopted standards, it has not generally re-examined its pre-existing metro markets against the new standards.

A second alternative posited by the Commission would be count against an applicant's ownership allowance any station it owns that is also counted in determining how many stations are in the market (NPRM, at 9). We believe this proposal is also seriously flawed because it has the potential to significantly reduce ownership opportunities in many circumstances. Specifically, it would count against an applicant's ownership allowance other stations owned by the applicant on the fringe of a market that may have only a slight and remote signal overlap with the stations that are the subject of the application. In such cases, since the "fringe" stations serve substantially different audiences from the stations proposed to be merged, the effect of the proposed definitional change would be to foreclose consolidation opportunities which would have no adverse effect on either competition or diversity.

A third Commission proposal – to change the contour overlap standard so that only stations that intersect the overlap area of the stations whose ownership is to be merged count as in the market – is one the Commission itself has little confidence in. We agree with the Commission's tentative conclusion that the proposal is likely to be "too restrictive and thus thwart the relaxation of the ownership rules that the 1996 Act contemplated" (NPRM, at 12).

A fourth Commission proposal would not change the method of counting an applicant's ownership allowance, but would exclude from the count of the number of stations in the market any other stations owned by the applicant. This proposal seems to us to be logically inconsistent. If the multiple ownership rules permit the applicant to own such other stations, there is no reason to exclude them in determining the size of the market. Should the Commission decide, however, to make any change in market definition, this proposal would be less restrictive than the three alternatives discussed above and, therefore, although still at variance with it, more in keeping with Congressional intent than the other options proposed.

2. The Commission's proposals would adversely affect competition in local radio markets.

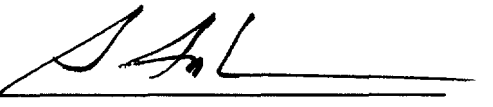
Since the 1996 Act was passed, local radio markets have experienced considerable consolidation. Changing the definition of radio markets now in a way that would materially reduce new ownership opportunities will adversely affect competition in local markets in two ways. First, it would deny to radio owners seeking future expansion the economies of scale that would enable them to better compete against radio owners that have already consolidated as permitted by the 1996 Act. Second, it would deny to radio

owners that have availed themselves of consolidation over the last five years the opportunity to pass on the efficiencies created by that consolidation when there is a sale to a new owner.

Conclusion

For the reasons set forth above, we urge the Commission not to make any change in the definition of radio markets so as not to thwart Congress' objective in enacting the 1996 Act to relax the ownership limits. If the Commission decides to make a change, we believe that the proposal to exclude from the count of the number of stations in the market any other stations owned by the applicant (described above as the fourth proposal) is the least likely to materially reduce consolidation opportunities Congress intended to allow.

Respectfully submitted,

By: 

Preston Padden, Executive Vice President

The Walt Disney Company
1150 17th Street NW
Washington, D.C. 20036

Alan Braverman, Executive Vice President
Sam Antar, Vice President
David Cohen, Executive Counsel

ABC, Inc.
77 West 66th Street
New York, New York 10023

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